

REPORT

FROM

VIRGIL MAXCY, SOLICITOR OF THE TREASURY,

On the case of Francis Cazeau's representatives.

JUNE 16, 1836.—Read, and referred to Committee on the Judiciary.

JULY 4, 1836.—Ordered to be printed.

OFFICE OF THE SOLICITOR OF THE TREASURY,

June 15, 1836.

SIR: I have the honor to send, herewith enclosed, a report upon the claim of Francis Cazeau, prepared in obedience to the resolutions of the Senate of the 5th and 6th May, 1836, and to return to the Senate the documents which accompanied those resolutions.

I am, with great respect, sir,

Your most obedient servant,

V. MAXCY,

Solicitor of the Treasury.

To the honorable MARTIN VAN BUREN,

Vice President of the U. S. and President of the Senate.

To the honorable the Senate of the United States:

In compliance with the resolution of the Senate bearing date the 5th ultimo, in the following words, viz:

“*Resolved*, That the memorial of the heirs of Francis Cazeau, and all the documents therewith filed, and the letter of the honorable Louis McLane, Secretary of State, to the honorable Hugh L. White, of the Committee on Revolutionary Claims of the Senate, dated 26th April, 1834, and the documents accompanying that letter, relative to the claim of the heirs of the said Francis Cazeau, be referred to the Solicitor of the Treasury; and that he be, and is hereby, requested to examine the same, and to report to the Senate, at its next session, the state of facts which, in his opinion, may be substantiated by any probable evidence, and particularly to inquire and report—

“1. Whether or not there is any probable and satisfactory evidence that the said Francis Cazeau did purchase and collect 8,000 bushels or any other quantity of wheat at Montreal, in the beginning of the year 1777, for the use of the American army, then expected to return into Canada, under engagement, particular or general, with any officer of the

American army, on whose engagement he had reasonable ground to place reliance? and if so, whether the said supplies, so purchased by him for the use of the American army, were lost to him in consequence of the American army failing to re-invade Canada?

"2. Whether or not there is any probable and satisfactory evidence that the three boats loaded with wine, brandy, cheese, tea, shoes, and hats, which it is alleged the said Cazeau sent under cover of a passport of General Burgoyne, in order to be delivered to the American troops, and which were captured on Lake Champlain by Major Brown, as enemy's goods, were in truth and in fact, *bona fide* intended as supplies for the American troops? And whether or not there is any probable and satisfactory proof that the shipment of the said supplies in the said boats was communicated to any officer or agent of the United States on that frontier, or elsewhere, at the time?

"3. Whether or not there is any probable and satisfactory evidence that the said Francis Cazeau did make advances to procure intelligence or otherwise, for the use of the troops of the United States, to the amount of \$276 64? And if there be any probable and sufficient evidence of the above items of claim, in the opinion of the Solicitor of the Treasury, he is requested to refer to the documents or depositions containing the same, and to state concisely and generally the nature of such evidence.

"4. That the Solicitor of the Treasury be, and he is hereby, requested further to inquire and report whether J. B. Stewart, who presented the claim of the heirs of the said Francis Cazeau to Congress at the session of 1816—17, and who then procured the passing of a bill for the payment of \$42,737 97 to the said Cazeau's heirs, and who received the said sum of money from the Treasury, was the authorized agent of the claimants or not? And,

"5. Whether the present memorialists are the heirs of the said Francis Cazeau? and whether Jacob Bigelow is the lawfully authorized agent or attorney in fact of the said Cazeau's heirs, to assert and prosecute this claim for them, and to grant acquittances for the same, if it shall be allowed?"

And, also, in compliance with the resolution of the Senate bearing date the 6th ultimo, in the following words, viz:

"Resolved, That the Solicitor of the Treasury be, and he is hereby, requested to make the report required of him in relation to the claim of the heirs of Francis Cazeau, to the present session of Congress, if he shall find it in his power to do so."—

I have the honor to submit the following report:

In performing the task assigned me, I take for granted that, although the petition, and all the papers accompanying it, of the heirs of Mr. Cazeau, were referred to me, it was intended, by the specification of particular points of inquiry, that I should confine my examination and report principally to those points. Under this impression, I shall not consider whether the petitioner has an equitable claim to indemnity for the confiscation of his property, or the breaking up of his commercial establishment, but limit my investigation, 1st, to the justice of his claim to remuneration for the 8,000 bushels of wheat which it is alleged were purchased for the American army; for the three boat-loads of other supplies said to have had the same destination; and for money spent in procuring and

communicating information to the troops of the United States ; and, 2dly, I shall inquire into the validity of the power under which a certain Josephus B. Stewart received a sum appropriated by law in 1817, to the legal representatives of Mr. Cazeau ; whether the petitioners are the heirs of Cazeau ; and into the authority by which Jacob Bigelow now claims to be their representative and agent.

In the investigation of the points proposed, it is proper to inquire into the character, principles, and dispositions of Mr. Cazeau, as upon these depend in a great measure the weight to be attached to testimony affecting the merits of the case ; and in respect to these, I think it is established beyond all doubt, by the most respectable testimony, that he was a merchant of Montreal, of large fortune, of extensive business and credit, of great popularity and influence, of an enthusiastic temperament, and of high and unimpeached reputation. At the dawn of our revolutionary struggle, excited by a dislike to the English domination in Canada, as well as by a conviction of the justice of our cause and an ardent love of liberty, he adopted the most decided opinions in favor of our Revolution, and manifested the most anxious desire that Canada should take part on our side in the contest. He accordingly used his utmost exertions to induce the Canadians to adopt his opinions, aided in circulating the proclamations of our commander-in-chief addressed to the Canadians, as well as other publications in support of our cause, furnished supplies for our army in the neighborhood of Canada, as well as information to its leaders, and on all occasions extended his protection, so far as was in his power, to Americans who fell into the hands of the British authorities, and relieved their distresses by a liberal use of his ample fortune. The consequences of which were, in the end, the confiscation of his large property, the breaking up of his extensive mercantile establishment, the utter ruin of his fortune and prospects, a long and tedious imprisonment of two years and a half, and finally, when by escaping he gained liberty for his person, it was to wander an exile from his home, to spend more than twenty years of his life in fruitless solicitation for justice to the Governments of the United States and France, and finally, after thirty years separation from his family, who were also destitute, to die in utter poverty in Paris, a dependant, during many years, for subsistence on the benevolence and charity of two old women, once domestics in his family, themselves in narrow circumstances, and of very limited means.

This statement is fully supported by the affidavits of Louis Papineau and Pierre Fabre, residents of Montreal, contemporaries and intimate acquaintances of Mr. Cazeau, and certified by the mayor of Montreal to be men of the highest respectability, veracity, and integrity. (See A.)

By the deposition of Joseph Hubert La Croix, a merchant and intimate acquaintance, who was an eye-witness of what he attests, and certified by the mayor of Montreal to be one of his Britannic Majesty's justices of the peace. (See B.)

By the certificates of Jacob Vander Heyden, a Canadian refugee. (See C.)

By the certificate of John Louis Cook, who styles himself lieutenant colonel in the army of the United States, commanding a corps of savages. (See D.)

By the certificates of Messrs. Lacombe, Landreau, Blake, and Desforge, neighbors of Mr. Cazeau. (See E.)

Of Louis Prejeau, clerk in one of the stores of Mr. Cazeau. (See F.)

Of Captain Simeon Smith, captain in Colonel Seth Warner's regiment, and Wm. Scudder, lieutenant in the first New York regiment, confined as a prisoner of war in the same prison with Mr. Cazeau. (See G.)

Of Ebenezer Stevens. (See H.)

Of Peter Gansevoort, colonel of the third New York regiment. (See I.)

Of General Schuyler. (See J.)

Of Colonel Edward Antill, whose testimony is very full. (See K.)

Of the late President Monroe. (See L.)

And finally, by a copy of the order of his imprisonment. (See M.)

These general facts relative to the conduct, character, principles, misfortunes, and final ruin of Mr. Cazeau being established, I proceed to examine into the testimony respecting the two items of claim referred to in the beginning of this report, to wit: 8,000 bushels of wheat alleged to have been bought under the authority of General Arnold, for the use of the American forces that were expected to invade Canada, and the four boat-loads of supplies claimed to have been intended as supplies for the American troops, and captured by Major Brown.

In coming to a just decision as to the kind and amount of testimony which ought to be required, it is proper to take into consideration, in addition to the character and motives of the claimant, the circumstances under which the claim arose. Mr. Cazeau was a French Canadian, subject to the dominion of Great Britain. His opinions and feelings were all in favor of the American Revolution, but the province of which he was an inhabitant had not joined the other English colonies in their revolt from the British power. To aid them in that revolt, would be considered treason in Mr. Cazeau, and he furnished their armies with supplies at the risk not only of his fortune, but his life. It is not to be expected, therefore, that he would have proofs in writing, either an authority for furnishing such supplies, or receipts for their delivery, from any officer of the American army. Accordingly we find no direct written evidence passing between the contending parties in support of the two principal items of charge. But we have as strong testimony from persons in the employ of Mr. Cazeau, as could reasonably be expected under the circumstances.

1. Augustin Langlois, who, in 1776 and 1777, kept a retail store for Mr. Cazeau, in the parish of La Fortue, where he owned a large flour mill, swears in 1800, that "he did by express orders from the said Francis Cazeau, purchase large quantities of wheat, which, from time to time, was ground into flour." (See O.)

2. Alexis Jibeau swears that, "during the years 1776 and 1777, he was in the employ of Mr. Francis Cazeau, then a merchant in Montreal, in the capacity of a miller, and that, by order of the said Mr. Cazeau, he superintended the grinding of large quantities of wheat into flour, upwards of 20,000 bushels, which said flour was by the same order packed into barrels, and that frequently Mr. Cazeau informed the appearer that said flour was intended by him for the use of the American army, who were expected shortly in this country; and also that the said appearer was obliged to quit the above employment, and to leave the mill, on account of Mr. Cazeau and his son being then confined in the common gaol at Montreal, on suspicion of having favored the American cause; and that afterwards he was turned out of the said mill, which was ac-

cordingly seized by order of Government, or the courts of justice, and some time afterwards sold by the same order; and further the said appearer declared upon his oath that Mr. Cazeau often informed him that he had entered into an agreement with the then commander-in-chief of the American forces, to supply them with certain quantities of flour, therefore it was necessary that he, the said appearer, should use all the diligence possible. And the said appearer further declared that it was the general opinion of the inhabitants in the country that the above army were actually on their way for that purpose, which he positively believed himself to be the case at the times above mentioned. And the said appearer further declared that, at divers times, said Cazeau requested him to be prepared to go, with others of his neighbors, to meet the continental army, so soon as they should make their appearance, by way of the river Chazie." (See P.)

3. Next comes Robert Keith, the clerk and agent of Mr. Cazeau from 1773 to 1778, who had the direction of his mills on Turtle river, and to whom it may be naturally supposed that he communicated his views more particularly than to his miller. This gentleman "declares that, in the year 1777, in the months of March, April, and a part of May, I had manufactured, by order of said Cazeau, nearly twelve thousand bushels of wheat for the army of the United States, at the request of General Arnold, who was expected in Canada in the spring; out of the whole of said flour I delivered on account of the King of Great Britain 1,660 gross hundred weight. All the remainder, with the whole of the middlings, heated and rotted, and was in a manner totally lost, not being able to procure hands to take the necessary care of it, as all those who were known to work for the said Cazeau, were immediately taken to St. John's and obliged to labor fifteen days as a punishment. The loss on the first cost of said wheat, &c., was, to the best of my knowledge, at least two thousand pounds of current money of Quebec and Halifax." (See Q.)

4. Pierre Robert P. Barrette, Frs. Le Maitre, F. La Pomeray, and Pt. Riel, certify that, from their "own knowledge, having in the year 1776, and afterwards, seen the flour, bran, and shorts, also plank-boards, belonging to Mr. Francis Cazeau, entirely rotten; as also his mill-dam, his houses, and cooper shop, a quantity of flour barrels falling down and going entirely to destruction, for want of hands to take the necessary care of the flour, bran, &c., notwithstanding all the inhabitants were willing and wished for nothing better than to work for one whom they so much esteemed, and in whom they placed the greatest confidence; but unfortunately if any person was found working for the said Cazeau, himself, horses and cart, were immediately sent to work for the King, at St. John's, for fifteen days, treated like slaves, and looked upon as rebels." (See R.)

5. Colonel Edward Antill's certificate, (exhibit K,) is in the following words: "Mr. Francis Cazeau having informed me that the honorable Congress having directed a revision of his demands upon the United States and having requested a further certificate from me, I take the liberty to assure the committee that Mr. Cazeau was well known in Canada to be a man of fortune, of extensive credit with the merchants, and had great influence with the peasantry; his prudence and secrecy had been tried,

his zeal and attachment to the cause was unequivocal ; he was closeted, consulted, and employed in almost every matter of importance ; he was commissioned to disperse the addresses of Congress and General Washington, sent into that country, and requested to exert his influence to enforce their effect ; and when it was determined in a council of war to leave that country, *I was directed to assure him of our speedy return*, and request him to inform all our friends of the same. The above is perfectly within my own knowledge. What particular instructions or directions he received from any of our commanding officers, relative to provisions, &c., I was not privy to ; but, I have such an opinion of Mr. Cazeau's zeal and integrity, that I have not a doubt in my own mind but that the articles he charges in his account were procured with an intent to serve the States."

From the foregoing documents I think we can fairly conclude that the 8,000 bushels of wheat charged in the account were bought by Mr. Cazeau, at the request of General Arnold, for the use of the American army, which he had reason to expect was about to return to Canada ; and that it was spoiled and lost in consequence of their not returning.

In the second place, respecting the charge of three batteau-loads of supplies, which were taken by Major Brown, of the American army, I am directed to inquire and report whether there is any probable and satisfactory evidence that these supplies were bona fide intended for the American troops, and whether the shipment of said supplies in said boats was communicated to any officer or agent of the United States.

1st. Robert Keith, Cazeau's store-keeper and agent, expressly states that, " In the spring of the year 1777, I received orders from the said Cazeau to purchase for him, in my own name, but on his account and risk, five batteaux, loaded with different wines, spirits, and other articles proper for the American army, three of which I had orders to deliver to the first officer commanding a detachment of Americans on Lake Champlain, or to the general commanding the army at Ticonderoga, on whatever conditions he should judge proper. On returning a receipt for the same, I was to be allowed to have performed my commission. Having arrived at the last-mentioned port, and finding it vacated, in consequence of which I sent to inform Mr. Cazeau thereof, and waited his further orders : Major Brown having made a descent on Ticonderoga, fired several discharges of musketry on our boats, killed one man, took and plundered the whole of the effects ; which was an absolute loss to the said Cazeau of at least one thousand pounds current money of Quebec and Halifax. Had I been at liberty to have sold the goods to General Burgoyne's army, I could have made one hundred per cent." (See exhibit Q.)

2d. The certificate of Jolibois, Gibau, Bertrant, and Gill, persons employed to conduct the batteaux under the orders of Robert Keith to Carrillon, an American post, is in the following words : " We, the subscribers, certify that, in the course of the spring of 1777, we were engaged in conducting five batteaux, laden with different articles, coming from Montreal, under the orders of Mr. Robert Keith, to bring and conduct them to Carrillon. Having arrived at the post we found the fort evacuated by the Americans, and I, *Jolibois*, departed directly for Montreal, giving notice to Mr. Cazeau, and asking him, on the part of Mr. Robert Keith, what he should do under these circumstances. Mr. Cazeau wrote in

consequence to Mr. Robert Keith, and directed me to take the said bateaux and cargoes, and advance until meeting the American officers commanding an advanced post, and to deliver to them the three bateaux with their cargoes on paying, or upon his receipt alone; and having arrived at Carrillon I found all the liquors, wine, and other effects taken and destroyed by a party of Major Brown." (See S.)

It appears to me that the above testimony, by itself, leaves no reasonable doubt that both the flour and the three boat-loads of supplies were intended for the American army, and ought, when supported by the oath of Mr. Cazeau, to be deemed satisfactory, especially when we consider that Congress, when the impressions of his character and services were fresh, directed his oath to be taken. That oath will be found annexed to the account, audited and settled by Mr. Barber, commissioner for accounts of the State of New York, who had, by their resolve of the 7th of June, 1785, empowered him to examine the accounts of such Canadian refugees as had furnished the American army with supplies. That oath, together with the report of Mr. Barber, who had *other concurrent testimony before him*, establishes the fact, not only that the supplies in question were purchased and intended for the American forces, but the purchases were made under an agreement with General Arnold, though it does not appear from any document referred to me by the first resolution of the Senate, that the shipment of the goods on board the bateaux was communicated at the time to any of our officers on the frontier. (See T.)

If the foregoing testimony be not considered sufficient, why, it may be asked, was not the flour sold to the British instead of being kept till it was spoiled? And if the boats loaded with supplies were not intended for our troops, why did they leave the British vessels, under whose protection they crossed the lake, and seek the earliest opportunity to go towards an American military station?

As respect the charges for advances for expresses to carry intelligence to our troops, amounting together to 276 dollars, I am of opinion that they ought to be allowed. It is abundantly proved that Mr. Cazeau was in the habit of procuring and communicating intelligence by express and otherwise to the officers of our army and others, though there is no direct testimony other than his own oath to support these particular items in his account now under consideration; but it is remarkable that, in a resolution passed by Congress, under the influence of a report of the Superintendent of Finance hereinafter mentioned, recommending a repeal of a former resolution in favor of the payment of the other items of the account, these items were left untouched.

I have, in pursuance of the order of the Senate, also examined the letter of the honorable Louis McLane to the honorable Hugh L. White, together with the accompanying documents. From them it appears that there were sundry reports made to Congress on the subject of Mr. Cazeau's claim, (See V;) that resolutions favorable to it were adopted, and one thousand dollars advanced on account, to relieve the immediate wants of Mr. Cazeau, (V. No. 1,) and that afterwards five thousand dollars more were ordered to be advanced to him, (U. No. 3.)

In opposition to these favorable resolutions however, afterwards, a letter was addressed, by Robert Morris, the Superintendent of Finance, on

the 13th April, 1784, to whom Cazeau had applied for the payment of his account, in which he encloses unfavorable reports of the Auditor and Comptroller, (see U. No. 2, 3, and 4.) From this letter, however, it appears that no proofs, except the oath of Mr. Cazeau, were ever before those officers, for Mr. Morris expressly says, "Congress will recollect that he (Cazeau) is himself the only evidence ever produced to show his own merits." It is but right, moreover, in estimating the weight which ought to be given to the opinion of Mr. Morris, to consider the bias of mind under which he wrote. That bias would naturally *incline* him to find reasons for not admitting any claim whatever which could possibly be avoided: for we all know what was the distressed state of our finances at that dark period of our Revolution, and that the patriotism which induced that able and virtuous man to devote all his fortune and abilities to the public service, would incline him to apply it exclusively to the public service. How strong that bias was, will appear from a letter from him to the President of Congress, of October 18, 1781, published in Sparks's Diplomatic Correspondence, vol. 2, page 490, an extract of which is as follows: "I am convinced that a slight view of the situation in which their finances now are, will give a strong impression of the necessity there is to guard against pecuniary solicitations from every quarter. If the revenue were equal to the demands upon it, nothing can be more simple and clear than that all those demands should be speedily and punctually paid. Unfortunately this is far from being the case, I believe much farther than many are aware of. When I say that I cannot command more than one-twentieth of the sum necessary for the current service of the year, I am within the strictest bounds of truth," &c.

"In this situation of things it is proper to ask on every occasion, before private grants of money are made, whether the public service will not suffer by it," &c.

"They will see that, while the indispensable calls for money to forward general operations continue to be so loud as to draw from me all my private funds, it cannot be expected that I shall pay warrants in favor of individuals. I am sure they will feel for me when I mention the pain I suffer from being compelled to refuse money on their resolutions." (See W.)

Notwithstanding this opposition of Mr. Morris, however, in June following, Congress passed a resolution directing that the "commissioners for settling the accounts for the State of New York, with the United States, be authorized and directed to examine the accounts of such Canadian refugees as have furnished the late armies of those States with any sort of supplies, and report thereon to Congress."

The result of this was the report of the Commissioner Barber, herein before referred to, in which he says that "as Congress, in their resolve of the 18th of March, 1784, was pleased to order that Mr. Cazeau's own testimony under oath be admitted, in support of such other evidence as the circumstance of the case required, I have accordingly taken it, (as hereunto annexed,) from which it appears that, by the agreement between Mr. Cazeau and General Arnold, all the provisions and stores furnished in consequence of said engagement, were to be at the risk of the United States, until delivered, and by his other concurrent testimony, the quantity charged in his account was *bona fide* procured for the purposes of

supplying our army; and that the same provisions and stores were unavoidably lost and destroyed before they were called for, or reached our troops," &c. Commissioner Barber's express reference to Mr. Cazeau's "*other concurrent testimony*," shows that there was before him other testimony than his own oath. (See T.)

This report was referred to the Board of Treasury, supported by the oath of Mr. Cazeau alone; for, in their report of August 29, 1785, they say, with Mr. Morris, that they "do not find the claims of Francis Cazeau supported by any other evidence than his own deposition." This declaration demonstrates that the "concurrent testimony" produced before Commissioner Barber was not, from some circumstance not now to be accounted for, referred to the Board of the Treasury with his report. This is confirmed by the opinion they express.

1st. "That he (Cazeau) should give the strongest presumptive proofs that such a verbal agreement as he sets forth existed betwixt himself and General Arnold."

2d. "That all the articles charged in the account, were *bona fide* purchased on account, and for the real service of the United States."

3d. "That the prices at which they are charged do not exceed the prices which prevailed in Canada when the purchases were made."

As these requisitions had not been complied with, as well as from motives of policy, the Board of Treasury recommended the adoption of a resolution, "that the several resolves of the 18th of March 1784, relative to the claims of Mr. Francis Cazeau, excepting the first, third, and fourth—and the resolve of the 7th of June last, (1784,) that is to say, all the resolves that had been passed in favor of Mr. Cazeau's claims, except the charges for the expense of expresses, amounting to \$276, should be repealed." The resolution thus recommended was adopted by Congress on February 2, 1786. (See V. No. 5.)

It is presumed that the Board of Treasury, if their three requisitions above stated had been complied with, would not have recommended the repeal of the resolutions in favor of Cazeau's claim. It is respectfully submitted that those requisitions have now been complied with, and that the documents heretofore referred to, if unaided by the oath of Mr. Cazeau himself, would furnish "the strongest presumptive proof that a verbal agreement existed between himself and General Arnold; and that the articles charged were *bona fide* purchased on account of, and for the real service of, the United States;" while the report of the Commissioner Barber establishes, by a comparison with the prices of wheat at the time, in the United States, that the prices charged by Mr. Cazeau were not exorbitant.

Of all these things Congress, after a full examination, in the year 1817, became satisfied, and after the unfortunate Cazeau was beyond the reach of their favors, passed an act of tardy justice to his descendants, which provided that "the sum of forty-two thousand seven hundred and thirty-seven dollars and ninety-three cents, be paid out of any money in the treasury not otherwise appropriated, to the legal representatives of Francis Cazeau, late merchant at Montreal, or to his or their assignee or attorney, or other person lawfully entitled to receive the same, in full compensation for all claims against the United States;" but, the misfortune which followed Cazeau to the grave seemed to survive to his de-

scendants, and deprived them of all benefit from this act, as will appear from the examination which I am directed to make under the resolution, which requires me to "inquire and report whether J. B. Stewart, who presented the claim of the heirs of said Francis Cazeau to Congress, at the session of 1816, 1817, and who then procured the passing of a bill for the payment of \$42,737 97 to the said Cazeau's heirs, and who received the said sum of money from the treasury, was the authorized agent of the claimants or not."

The act of Congress here referred to, procured by J. B. Stewart, and upon which he received the money, directed it to be paid "to the legal representatives of Francis Cazeau, late merchant of Montreal, or to his or their assignee or attorney, or other person lawfully entitled to receive the same."

At the time this act passed Cazeau was dead, and any power of attorney executed by him would expire with him. An authority from his heirs and legal representatives thereby became necessary, to receive payment of the money appropriated to them by this act. (See Hovenden on Frauds, vol. 1, pp. 178, 179, 191, 192, 193, 194; vol. 2, p. 223. Paley on Agency, 156, 209. 5 Espinasse's Reports, case 118. Livermore on Agency, vol. 2, pp. 301, 302, 303.)

No such authority was produced at the Treasury Department, nor does it appear that Stewart, when he applied to Congress on behalf of the family of Cazeau, ever exhibited any such power, or claimed to have any. (See memorandum for Mr. Roberts in Senate documents of 1826, No. 80.) The only authority for receiving the money that was exhibited by Stewart at the Treasury Department, was an assignment and power of attorney from Francis Cazeau to Francis Corbaux, and a power of attorney from Francis Corbaux to James Grubb, and a substitution by James Grubb to Josephus B. Stewart. (See letter of the Secretary of the Treasury, marked X.)

And this assignment, which is on file in the Register's office, in the Treasury Department, and which I have inspected, is not an original document, but a copy only, certified by our consul in Paris. It does not appear that Stewart was called on to produce the original, or to prove its loss, or that it was on any other account out of his power to produce. This ought to have been done; for an original paper, still subsisting as a contract, must always be produced, unless the party claiming under it can prove it to be lost, or out of his power. "Secondary evidence of the contents of written instruments is not admissible, when originals are within the control or custody of the party." (See *Sebru vs. Don*, 9 Wheaton, 558; also, articles 1334, 1335, of the Code Napoleon, page 363 of the English translation in the Congress library; also, Evans's Pothier, 474, 475, 476, 478.)

It is not denied by the memorialists that an assignment and agreement, of which a copy was exhibited at the Treasury Department when the money appropriated to the family of Cazeau was paid to Stewart, was executed between Cazeau and Corbaux. That instrument is among the documents accompanying the memorial, and is marked Y. It purports to be an assignment by Cazeau, made in consequence of his age and infirmities, and consequent inability to prosecute further his claims before Congress, and the consideration of 1,200,000 francs paid him by Cor-

baux, of three-fourths of his claims; which assignment is accompanied with a power of attorney in favor of Corbaux, to petition for the remaining fourth part, and to collect and receive it to the use of Cazeau. The assignment of three-fourths is in terms absolute, and the power of attorney *irrevocable*; and a penalty of \$20,000 is provided, if Cazeau or his heirs should revoke it. But notwithstanding these absolute terms, and this penal provision, an agreement bearing the same date was executed by the parties, limiting the time for Corbaux to obtain Cazeau's claim of Congress to two sessions, and authorizing Cazeau to resume all his rights and revoke his power of attorney, without incurring the penalty of \$20,000. (See the document marked Z.)

It appears, moreover, that the grossest imposition had been practised by Corbaux on Mr. Cazeau, then seventy-seven years of age and broken down by grief and infirmities, to induce him to make the assignment of three-fourths of his claim for the nominal sum of 1,200,000 francs, (\$200,000,) not one sous of which was ever received, as is shown not only by the express declaration of the old man in a letter of November 30, 1808, just a year after the execution of the power of attorney and assignment, but still more conclusively by the fact of the continued penury in which he lived from the date of that assignment to his death. In less than five months after its execution, on the 19th April, 1808, he revoked the power of attorney, and instituted, in the May following, a criminal proceeding against Corbaux, for the purpose of annulling the agreement and punishing him for his fraud; and Corbaux's answer to this proceeding shows that he surrendered many papers delivered to him by Mr. Cazeau. (See letter from Mr. Cazeau to his grandson, with a receipt of the bailiff, Thille, attached thereto, marked A A; and Corbaux's answer, marked B B.)

This proceeding probably ended by an order for the surrender of the assignment and power of attorney to Cazeau, and the consequent inaction of Corbaux under it; for it does not appear that he ever took any steps whatever to assert Cazeau's claims before Congress during his lifetime; but, after getting a certified copy from the consul's office, in the latter part of the year 1808, remained quiet until Cazeau died, in 1815, immediately after which he went to London, and concerted the scheme for defrauding the heirs of Cazeau with James Grubb and Josephus B. Stewart; executed a power of attorney to the former, who substituted the latter, who came to this country, and by means of the certified copy of Cazeau's assignment and power of attorney to Corbaux, *which might have been obtained by any other person on paying the office fees* for copying and attesting, and copies of original papers which he stated in his letter to the chairman of the Committee of Claims in the Senate had been burnt up in the Treasury Department, induced Congress to pass the act of 1817, and afterwards obtained the money appropriated by it to the Cazeau family from the Treasury Department, after the surrender and annulment of the assignment to Corbaux. The original papers had in fact been sent by Cazeau, as early as 1809, to General Mason, of Georgetown, with a power of attorney to prefer his claims to Congress. While General Mason was waiting for additional documents from Cazeau's grandson, Mr. Reeves, of Canada, the late war with Great Britain took place, when it was not deemed expedient to petition Congress for money.

Immediately after the war Cazeau died, and General Mason, considering his power of attorney as revoked by that event, took no steps towards the recovery of the claim; but two years after Cazeau's death, on the application of Mr. Reeves, of Canada, delivered to him all the papers in his possession, as the representative of his grandfather's family; and these original papers are now presented to the Senate by Mr. Bigelow, as agent of Cazeau's heirs. (See General Mason's letter, E E.)

If the foregoing facts be not sufficient, the imposture of Stewart is placed beyond all reasonable doubt by the falsehoods in his statements to the committee of the Senate, when his petition for the Cazeau family was pending in the Senate, and previous to the favorable report. At this period Stewart addressed a letter of the date of 11th January, 1817, to the chairman of the Committee of Claims, (see Senate documents 1817, No. 80,) in which, amongst other matters, he states that "The undersigned begs leave, through you, to inform the honorable Committee of Claims how the accompanying claim of Mr. Cazeau came into his hands, what part of it is submitted to their consideration, and to add a short history of the same."

"In March last, the undersigned was in London as chancellor of the United States consulate at that place, at which time the claim of Mr. Cazeau was presented to Mr. Adams, our minister at that court, who was at the same time informed that Mr. Cazeau was dead, and had left a wife and children in Paris, in extreme poverty; that Mr. Corbaux, a relation and friend of Mr. Cazeau, had supported the family many years, to indemnify him for which he had taken an assignment of part of the claim, and a power for the recovery of the whole; that from his advanced years, to these circumstances, he was unable to cross the Atlantic and prosecute the claim. Mr. Adams, from previous knowledge, deeming part of the claim just, referred it to the consul, for him to put into the hands of some person to present to Congress at their present session. Having other engagements which required the attendance of the undersigned at the seat of Government, he, at the solicitation of the parties, accepted a power for this purpose, subject to such discretionary modifications as he might deem proper."

"The extreme poverty of the Cazeau family, as well as the indigent circumstances of Mr. Corbaux, by whose bounty they have subsisted for the last eighteen years, would render very acceptable now what the *obstinacy* of Mr. Cazeau, in his lifetime, induced him to refuse." (See C C.)

In the course of that letter he referred to documents in support of the claim which were not originals, stating that "the originals were burnt some years since in the Treasury Department."

In another letter to the chairman, dated the 23d January, 1817, (see Senate document No. 80, marked C C,) Stewart says, "Last spring Mr. Corbaux came to London, and, (as I was absent,) *by direction of our minister and consul*, gave a full power relative to the whole claim to Mr. Grubb, the private secretary of Mr. Adams, which power on my return was assigned to me, Mr. Grubb having accepted for that express purpose."

The entire falsehood of Stewart's statements respecting Cazeau's family—of his assertion that Corbaux was a relative and had supported Mr. Cazeau, is fully established by the affidavits and certificates marked

D D; from which it appears that no part of Cazeau's family ever lived in Paris; that he never received any assistance from Corbaux, nor was in any way related to him; that, on the contrary, he subsisted on the benevolence and charity of two old women, named Goutri and Cajou, who were once domestics in his family, until the day of his death. It does not appear that either Mr. Adams our minister, nor Colonel Aspinwall our consul at London, ever recommended Stewart as agent for the claim before Congress, and especially the latter, who did not even know the contents of the paper, which was the power of attorney constituting him his agent, which was authenticated by his official certificate and seal, annexed as a matter of form, to attest the execution of it. Neither Grubb nor Stewart had any authority from him to use his name in their favor. Grubb was turned out of his office as a clerk, on account of misconduct, and neither he nor Stewart were persons whom he would have recommended to have charge of a pecuniary transaction. It appears moreover that the family never received any part of the money obtained by Stewart for them, but that Stewart paid his partners in the fraud, Corbaux and Grubb—the former \$4,700, and the latter £250. (See affidavits of Cazeau's heirs, and others, marked D D, and the letter of Colonel Aspinwall, marked F F. No. 2.)

I am directed in the last place to inquire "Whether the present memorialists are the heirs of Francis Cazeau? and whether Jacob Bigelow is the lawfully authorized agent or attorney in fact of the said Cazeau's heirs, to assert and prosecute this claim for them, and to grant acquittances for the same, if it should be allowed?"

1. It is proved by an extract from the register of deaths of the tenth arrondissement, for the year 1815, that Cazeau died at Paris on the 11th May, 1815, (marked E E. No. 2.)

2. It is proved by the affidavit of Augustus Perthelet, Henry Loctel, and Gabriel Francheres, jr., duly authenticated under the signature and seals of two notaries public, and by the signature and seal of the Governor of Lower Canada, (marked F F,) that Elizabeth Cazeau, Louis Charles Cazeau, were the daughter and son of Francis Cazeau. That Marie Margaret Cazeau and Mary Elizabeth Cazeau are the children of Francis Francis Cazeau and grand-children of Francis Cazeau, and that they married William Smith and Jean Baptiste Routier. That John Jesse Reeves, Francis William Reeves, Charles Louis Reeves, Henry Benjamin Reeves, Alexander Amiens Reeves, and Margaret Victorine Reeves, are sons and daughters of John Jesse Reeves and Margaret Cazeau, daughter of Francis Cazeau, and that together they constitute all of the heirs of Francis Cazeau.

In further proof that the above persons are the heirs of Francis Cazeau, see the extracts from the register of births, marriages, and burials, in Montreal, duly authenticated by the prothonotaries of the court of king's bench in Montreal; by the signature and seal of the Earl of Dalhousie, captain-general and governor-in-chief of Lower Canada, and a certificate to the hand-writing of the Earl of Dalhousie, under the seal of Viscount Goderich, principal secretary of state for the colonial and war department, (marked G G.)

And, finally, in the third place, it is proved by the power of attorney of all the heirs of Francis Cazeau, to Jacob Bigelow, duly authenticated

by the seal and signature of a notary public at Montreal, and the seal and signature of Lord Aylmer, Governor of Upper and Lower Canada, and a certificate from the office of Lord Goderich, his Britannic Majesty's principal secretary of state for the colonial and war department, to the hand-writing of Lord Aylmer, that said Jacob Bigelow is the lawfully authorized agent or attorney in fact of Cazéau's heirs, to assert and prosecute their claim for them, and to grant acquittances from the same, if it shall be allowed. (See document marked H H. See also letter of attorney of Sophie Dietz, formerly wife of Francis Gaillaume Reeves, marked I I.)

All which is respectfully submitted.

V. MAXCY,
Solicitor of the Treasury.

